

Panaji, 26th August, 2010 (Bhadra 4, 1932)

SERIES II No. 22

OFFICIAL GOVERNMENT OF GOA GAZETTE



PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Finance
Revenue & Control Division

Notification

No. 2/1/95-Fin(R&C)(A)/Part

In exercise of the powers conferred by sub-rule (4) of Rule 99 of the Goa Excise Duty Rules, 1964 the Government of Goa, being satisfied that it is necessary in the public interest, hereby directs that all licensed premises for the sale of liquor located within the jurisdiction of the Village Panchayat specified in column (3) of the Schedule hereto, located in the Taluka as specified in the corresponding entries in column (2) of the said Schedule, shall be closed from 28-8-2010 to 30-8-2010 in view of Bye-elections to vacant wards of Village Panchayats, by the Goa State Election Commission to the wards of the said Village Panchayat as specified in corresponding entries in column (4) of the said Schedule.

SCHEDULE

Sr. No.	Name of the Taluka	Name of the Village Panchayat	Ward
1	2	3	4
1.	Bicholim	Karapur-Sarvona	Ward No. IX
2.	Bardez	1) Verla-Canca	Ward No. III
		2) Oxel	Ward No. IV
		3) Revora	Ward No. VII
3.	Ponda	1) Veling-Priol	Ward No. III
		2) Tivrem-Orgao	Ward No. II
4.	Tiswadi	St. Estevam	Ward No. I
5.	Satari	Keri	Ward No. III
6.	Salcete	1) Nuvenm	Ward No. IV
		2) Curtorim	Ward No. II
		3) Chinchinim	Ward No. II

By order and in the name of the Governor of Goa.

Rajendra Gawandalkar, Under Secretary, Fin. (R&C).
Porvorim, 23rd August, 2010.

Notification

No. 2/1/95-Fin(R&C)(B)/Part

In exercise of the powers conferred by Sections 5 and 8 of the Goa Excise Duty Act, 1964 (Act 5 of 1964) (hereinafter called the "said Act") the Government of Goa hereby prescribes that, notwithstanding anything contained in the Government Notifications No. Fin(Rev)/2-35/SE/6/68/(A) dated 29-2-1972 and No. Fin(Rev)/2-35/SE/6/65/(B) dated 29-2-1972, the following shall be the maximum quantity of liquor which can be transported from one place to another within the jurisdiction of ward as specified in column (4) of the schedule hereto, (hereinafter called the "said area") located in the village as specified in column 3 of the taluka as specified in column 2 of the said Schedule, or which can be possessed by any person within the said area, without permit issued in accordance with the provisions of the said Act and the rules made thereunder, from 28-8-2010 to 30-8-2010.

- a) Three quart bottles of Indian made foreign liquor other than beer and six bottles of beer for any person including his family.
- b) Three quart bottles of country liquor for any person including his family.

This Notification shall remain in force only from 28-8-2010 to 29-8-2010 and on the day of counting of votes i.e. on 30th August, 2010 in view of Bye-elections to vacant wards of Village Panchayats in the State of Goa as specified in the corresponding entries in column (4) of the said Schedule.

SCHEDULE			
Sr. No.	Name of the Taluka	Name of the Village Panchayat	Ward
1	2	3	4
1.	Bicholim	Karapur-Sarvona	Ward No. IX
2.	Bardez	1) Verla-Canca	Ward No. III
		2) Oxel	Ward No. IV
		3) Revora	Ward No. VII
3.	Ponda	1) Veling-Priol	Ward No. III
		2) Tivrem-Orgao	Ward No. II
4.	Tiswadi	St. Esteveam	Ward No. I
5.	Satari	Keri	Ward No. III
6.	Salcete	1) Nuven	Ward No. IV
		2) Curtorim	Ward No. II
		3) Chinchinim	Ward No. II

By order and in the name of the Governor of Goa.

Rajendra Gawandalkar, Under Secretary, Fin. (R&C).
Porvorim, 23rd August, 2010.

Directorate of Accounts

Order

No. DA/Admn/45-3/10-11/TR-2094/66

Government is pleased to promote the following Accountants under Common Accounts Cadre to the post of Assistant Accounts Officers (Group 'B' Gazetted) in the scale Pay Band PB—2 (Rs. 9,300-34,800) with Grade Pay of Rs. 4,600/- purely on ad hoc basis with effect from 23-08-2010:

1. Smt. Joanita Silvia Dias.
2. Shri Ramesh Mahale.
3. Smt. Sandhya Korde.
4. Shri Surya Chodankar.
5. Shri Babli B. Naik.
6. Smt. Sailee B. Amonkar.
7. Shri Dattaram Parulekar.

Government is further pleased to order the posting of the following Assistant Accounts Officer under Common Accounts Cadre in the Departments shown against their names:

Sr. No.	Name of the Officer	Posted on promotion/transfer
1	2	3
1.	Smt. Joanita Silvia Dias	Directorate of Women & Child Development, Panaji against vacant post thereby relieving Shri Rajendra Gaude, AAO of additional duties.

1	2	3
2.	Shri Ramesh Mahale	Directorate of Accounts, Panaji against vacant post.
3.	Smt. Sandhya Korde	Directorate of Accounts, South Branch Office, Margao vice Shri Premnath P. Naik, AAO, promoted to DDA/AO.
4.	Shri Surya Chodankar	Directorate of Accounts, Panaji against vacant post.
5.	Shri Babli B. Naik	River Navigation Department, Betim vice Shri Ramchandra Mandrekar, AAO transferred.
6.	Smt. Sailee B. Amonkar	Directorate of Accounts, Panaji against vacant post.
7.	Shri Dattaram Parulekar	Commissioner of Labour & Employment, Panaji against vacant post thereby relieving Shri Madhukar Kunkolienkar, AAO of additional duties.

It is further proposed to transfer and post following Assistant Accounts Officer:

Sr. No.	Name of the Officer	Department to be posted
1	2	3
1.	Shri Ramchandra L. Mandrekar	Asilo Hospital, Mapusa.
2.	Shri Vinayak Kamat	Directorate of Accounts, Panaji.

Further the Officers at Sr. Nos. 1, 2, 3, 4, 5 & 7 shall continue to hold the additional charge of the post of Accountants they previously held till the time the regular Accountants are posted.

The ad hoc promotions in respect of the above Officers will be for a period of six months or till the posts are filled on regular basis whichever is earlier. These ad hoc promotions will not bestow on the Officers any claim for regular appointment/ promotion and services rendered by them in the grade will not count for the purpose of seniority in the grade or for eligibility for promotion to the next higher grade.

On joining to their promotional post, the Officers shall send CTC/Joining Reports immediately to this Directorate.

By order and in the name of the Governor of Goa.

P. S. Gude, Joint Secretary.

Panaji, 23rd August, 2010.

Department of Home

Home—General Division

Notification

No. 2/51/2000-HD(G)/Vol.I

In pursuance of clause (c) of Rule 2 of the Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter called the "said Rules") and in supersession of the Government Notification No. 2/51/2000-HD(G)/Vol.I dated 21-09-2000, published in the Official Gazette (Extraordinary), Series II No. 25, dated 22-09-2000, the Government of Goa hereby designates the following officers for the maintenance of the ambient air quality standards in respect of noise under the said Rules, with immediate effect:

Sl. No.	Designation of Officer
1	2
(1)	District Magistrate, North Goa, Panaji.
(2)	District Magistrate, South Goa, Margao.
(3)	Director General of Police, Panaji.
(4)	Deputy Collector and Sub-Divisional Magistrate, Panaji.
(5)	Deputy Collector and Sub-Divisional Magistrate, Ponda.
(6)	Deputy Collector and Sub-Divisional Magistrate, Mapusa.
(7)	Deputy Collector and Sub-Divisional Magistrate, Bicholim.
(8)	Deputy Collector and Sub-Divisional Magistrate, Margao.
(9)	Deputy Collector and Sub-Divisional Magistrate, Mormugao.
(10)	Deputy Collector and Sub-Divisional Magistrate, Quepem.
(11)	Superintendent of Police (North), Panaji.
(12)	Superintendent of Police (South), Margao.
(13)	Sub-Divisional Police Officer, Panaji.
(14)	Sub-Divisional Police Officer, Ponda.
(15)	Sub-Divisional Police Officer, Margao.
(16)	Sub-Divisional Police Officer, Vasco.
(17)	Sub-Divisional Police Officer, Mapusa.

1

2

(18) Sub-Divisional Police Officer, Quepem.

(19) Sub-Divisional Police Officer, Bicholim.

(20) Sub-Divisional Police Officer, Mapusa-II (Porvorim).

By order and in the name of the Governor of Goa.

Siddhivinayak Surendra Naik, Under Secretary (Home).

Porvorim, 17th August, 2010.

Department of Labour

Notification

No. 28/1/2010-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 09-08-2010 in reference No. LC-II/IT/6/09 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 19th August, 2010.

THE LABOUR COURT-II GOVERNMENT OF GOA AT PANAJI

(Before Shri Suresh N. Narulkar,
Hon'ble Presiding Officer)

Case No. LC-II/IT/6/09

Shri Pandurang Gaude,
Rep. by General Secretary,
Gomantak Mazdoor Sangh,
G-5, Machado Apts.,
Tisk, Ponda-Goa. Workman/Party I
V/s

M/s. Pack-A-Well,
Plot Nos. 9, 10, 11, & 14
Kundaim Industrial Estate,
Kundaim-Goa. Employer/Party II

Party I/Workman represented by Shri P. Gaonkar.

Party II/Employer marked as Ex-parte.

Panaji, Dated: 09-08-2010.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 22-09-2009 bearing No. 28/20/2009-LAB/953 referred the following dispute for adjudication by the Industrial Tribunal of Goa.

“(1) Whether the action of the Management of M/s. Pack-A-Well, Kundaim-Goa in refusing employment to its Workman, Shri Pandurang Gaude, Loader, w.e.f. 07-01-2009, is legal and justified?”

2. If not, to what relief, the Workman is entitled to?”

2. On receipt of the reference, a case was registered under No. LC-II/IT/6/09 and registered A/D notice was issued to the parties. In pursuance to the said notice, the Workman/Party I put in his appearance. The Employer/Party II was duly served by registered A/D notice, however failed to appear on 18-11-2009 and subsequent scheduled dates of hearing without any justifiable cause, hence the Employer/Party II was marked as ex-parte. The Workman/Party I (for short ‘Workman’), filed his statement of claim on 18-11-2009 at Exb. 3. The facts of the case in brief as pleaded by the Workman are that the Gomantak Mazdoor Sangh is a registered Trade Union registered under the Trade Union Act, 1926 and it represents almost all the workmen employed by the Employer/Party II at Goa plants. He stated that the Employer/Party II (for short “Employer”) is an industrial establishment carrying out the job work of printing and packing of multinational companies of such as Colgate and Palmolive, Whisper, etc. He stated that the employer is carrying out its business activities in its factory situated at Kundaim Industrial Estate, Kundaim-Goa since the year 1998. He stated that though the business of the employer company was increasing every year, the employer was implementing the various unfair labour practices such as non-payment of minimum wage, non-coverage of the workers under ESIC, Provident Fund from the initial date of employment of its workmen. He stated that he joined with the employer company in June, 2003. He stated that he worked with the employer company from the date of his joining since June, 2003 till the date of refusal of employment w.e.f. 07-01-2009 continuously without any break. He stated that because he joined the Union alongwith the other workers, he was not allowed to resume the duty w.e.f. 07-01-2009. He stated that he made a demand

for reinstatement vide his representation dated 07-01-2009 on refusal of his employment by the employer company, but the employer refused to allow him to resume the duty. He stated that therefore he raised an industrial dispute before the Assistant Labour Commissioner, Ponda through their Union letter dated 07-01-2009 which ended in failure due to the adamant attitude of the Employer. He stated that before his refusal of employment, he was not issued any charge sheet nor any enquiry was conducted and hence the employer company has violated the principles of natural justice. He stated that at the time of refusal of his employment, he was not paid or offered any retrenchment compensation, notice pay and other dues and hence the refusal of his employment is in violation of Sec. 25-F of the I. D. Act, 1947 and therefore it is illegal, unjustified and bad in law. He stated that after refusal of his employment the employer has employed new workman on his place of work and he was not re-employed by the Employer and hence violated Sec. 25-H of the I. D. Act, 1947. He submitted that before refusal of his employment, the employer has not followed the procedure in accordance with Sec. 25-G of the I. D. Act, 1947 and as such violated the said provisions of the I. D. Act and hence his refusal is illegal, unjustified and bad in law. He submitted that at the time of his refusal of employment, the matter of Charter of Demands was pending before the Conciliation Officer since 12-08-2008 and the first meeting was fixed by the Assistant Labour Commissioner and Conciliation Officer, Ponda-Goa and the employer has not obtained the permission of the appropriate authority nor an application under Sec. 33 of the I. D. Act, 1947 was filed before the appropriate authority and hence violated Sec. 33 of the I. D. Act, 1947. He submitted that before refusal of his employment, the provisions of the I. D. Act, 1947 were not followed by the Employer. He therefore contended that the refusal of employment to him by the employer is illegal, unjustified and bad in law and he is entitled to reinstate with full back wages and continuity in services. He submitted that since his refusal of employment, he is unemployed and could not succeed in getting any employment. He therefore prayed that the refusal of employment to him be declared as illegal, unjustified and bad in law and direct the employer to reinstate him in employment with full back wages and continuity in service. He has also requested for awarding the cost of the present petition.

2. Though the employer company has been duly served with summons of this Hon’ble Court by

registered A/D notice, the employer failed to appear before this Hon'ble Court on the scheduled dates of hearing and consequently failed to resist the present claim statement of the Workman.

3. Based on the pleadings filed by the Workman in the present reference this Court framed the following issues on 10-12-2009 at Exb. 4.

1. *Whether the Workman/Party I proves that he was employed with Employer/Party II as a "Loader" w.e.f. June, 2003 till the date of his termination on 07-01-2009 continuously without any break in service?*
2. *Whether the Workman/Party I proves that the Employer/Party II had refused employment to him w.e.f. 07-01-2009?*
3. *Whether the Workman/Party I proves that Employer/Party II had violated Section 33 of the Industrial Disputes Act, 1947?*
4. *Whether the Workman/Party I proves that the action of the Employer/Party II in refusing employment to him is illegal and unjustified?*
5. *Whether the Workman/Party I proves that he is entitled for any relief?*

6. *What Award? What Order?*

5. My answers to the aforesaid issues are as under:

- Issue No. 1: In the affirmative.
 Issue No. 2: In the affirmative.
 Issue No. 3: In the negative.
 Issue No. 4: In the affirmative.
 Issue No. 5: In the affirmative.
 Issue No. 6: As per final order.

REASONS

Issue No. 1:

6. It is the Workman who has raised an industrial dispute by contending that he was employed with the employer company as a 'Loader' w.e.f. June, 2003 till the date of his refusal of employment on 07-01-2009 continuously without any break in service. Therefore, the burden to prove the said contention is on the Workman.

Ld. Rep. Shri P. Gaonkar, representing the Workman during the course of his oral arguments submitted that the Workman has examined himself in order to prove the aforesaid issue and also produced on record an Identity Card issued by E.S.I. Corporation (Exb. W/7), E.P.F. Slip issued to him for the year 2003-2004 (Exb. W/8), Wage Slips (Exb. W/10-colly) and copies of the returns filed

by the employer company from March, 2000 to February, 2008 (Exb. W/9-colly) in support of his oral evidence. He submitted that the oral as well as the documentary evidence on record clearly proves that the Workman was employed with the employer company as a "Loader" since June, 2003 till the date of refusal of his employment on 07-11-2009 continuously without any break in service. He submitted that no appointment letter was issued to him.

I have carefully perused the entire records of the present case. I have also carefully considered the various oral submissions made by the Ld. Rep. Shri P. Gaonkar.

7. Admittedly, the Workman in his oral evidence on record clearly stated that he was working as a 'Loader' with the employer company since June, 2003 continuously without any break in service till the refusal of employment to him w.e.f. 07-01-2009. The Workman in his oral evidence also stated that he has worked for more than 240 days in a calendar 12 months preceding the date of refusal of his employment w.e.f. 07-01-2009. In support of his oral evidence, the Workman has produced on record an Identity Card issued by E. S. I. Corporation (Exb. W/7), E.P.F. Slip issued to him for the year 2003-2004 (Exb. W/8), wage slips (Exb./13-colly), and copies of the returns filed by the employer company from March, 2000 to February, 2008 (Exb. W/9-colly). The said E. P. F. Slip for the year 2003-2004 on record at Exb. W/8 indicates that the employer has contributed their contributions and also deducted the Workman's contribution towards Employees Provident Fund Scheme. So also the copies of the returns filed by the employer from March, 2000 to February, 2008 in the prescribed form No. 6-A of the Employees Provident Fund Scheme 1952 clearly indicates that the employer had filed the same annually and also indicates the name of the Workman and the amount of Provident Fund paid in respect of the Workman since the year 2004-2005 alongwith other employees. The said oral as well as documentary evidence produced by the Workman on record has not been denied by the employer by remaining absent and thus, remained unchallenged. The aforesaid documentary evidence on record clearly corroborates with the oral evidence of the Workman that he was employed with the employer company since June, 2003 till 07-01-2009 continuously without any break in service.

It is therefore held that the Workman was employed with the employer company as a 'Loader' w.e.f. June, 2003 till 07-01-2009 continuously without any break in service.

Issue No. 2:

8. It is the Workman who has raised the present industrial dispute by contending that the employer company had refused an employment to him w. e. f. 25-11-2008. Therefore, the burden of proving the aforesaid contention is on the Workman.

9. The Workman in order to prove his aforesaid contention that he has been refused employment by the employer company w.e.f. 07-01-2009, produced on record a notice of the employer company dated 07-01-2009 stating the break to him at Exb. W/3 in support of his oral evidence. The said notice of the employer company dated 06-01-2009 at Exb. W/3 clearly indicates that the Workman has been refused the employment from 07-01-2009. It is therefore held that the employer company has refused employment to the Workman w.e.f. 07/01/2009.

Issue No. 3:

10. It is the Workman who has raised the present industrial dispute pertaining to his alleged illegal refusal of employment by contending that it is in violation of Sec. 33 of the I. D. Act, 1947. Therefore, the burden to prove the said contention is on the Workman.

Sec. 33 (1) of the I. D. Act, 1947 prohibits the employer to alter to the prejudice of the Workmen concerned in such dispute the service conditions etc., during the pendency of the proceedings before the Conciliation Officer or a board or of any proceedings before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute.

11. Though the Workman in his oral evidence stated that they have raised a Charter of Demands vide their letter dated 29-07-08, the Workman has failed to produce on record any cogent evidence in the form of document such as the said Charter of Demands submitted to the authority or any notice issued to the parties therein to substantiate his aforesaid statement. The Workman also failed to give any satisfactory justification for non-production of any documentary evidence in support of his statement that they have raised a Charter of Demands vide their letter dated 20-7-08. It is therefore held that the Workman failed to prove that the employer company has violated Sec. 33 of the I. D. Act, 1947.

Issue No. 4:

12. It is the Workman who has raised an industrial dispute by contending that the action of the employer company in refusing employment to him w.e.f. 07-01-09 is in violation of Sec. 25-F,

25-G & 25-H of the I. D. Act, 1947 and hence it is illegal and unjustified. It is therefore incumbent upon the Workman to prove that the action of the employer in refusing the employment to him w.e.f. 07-01-09 is illegal and unjustified.

13. In order to prove his case, the Workman has led oral evidence by examining himself. In his oral evidence on record, he categorically stated that the employer company has not issued any charge sheet nor any inquiry was conducted before refusal of employment to him. He stated that the employer company has employed new Workman in his place after refusal of employment to him and hence violated Sec. 25-H of the I. D. Act, 1947. He stated that the employer company has also not followed the procedure in accordance with Sec. 25-G of the I. D. Act, 1947. He stated that at the time of refusal of his employment neither he was offered nor paid any retrenchment compensation, notice pay and other dues and hence violated Sec. 25-F of the I. D. Act, 1947. He finally deposed that the employer company has violated the basic principles of natural justice while terminating his services. The aforesaid oral evidence of the Workman remained unchallenged since the employer company failed to cross examine the Workman by remaining absent.

14. While discussing the Issue No. 1 hereinabove, I have already held that the Workman was employed with the employer company as a 'Loader' since June, 2003 till 07-01-2009 continuously without any break in service. Similarly, while discussing the Issue No. 2 hereinabove, I have already held that the employer company refused employment to the Workman w.e.f. 07-01-2009. The said refusal of employment to the Workman amounts to the termination of his services w.e.f. 07-01-2009.

15. Sec. 25-F of the I. D. Act, 1947 reads as under;

"No Workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until-

- (a) *The Workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the Workman has been paid in lieu of such notice, wages for the period of the notice;*

The Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days of average pay

(for every completed period of service) or any part thereof in excess of six months; and

- (c) Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)"

16. In the instant case, the Workman was employed with the employer company since June, 2003 till 06-01-2009 as a 'Loader' continuously without break in service. The oral evidence of the Workman on record indicates that neither one month notice in writing indicating the reasons for retrenchment and the period of notice has expired or that the Workman has been paid in lieu of such notice, wages for the period of the notice. The oral evidence of the Workman on record also indicates that the employer company has failed to pay the Workman at the time of refusal of his employment, retrenchment compensation equivalent to fifteen days average pay of every completed years of continuous service or any part thereof in excess of six months. The evidence on record indicates that no notice in the prescribed manner is served on the appropriate Government. Thus, the evidence on record proves that the employer company has violated Sec. 25-F of the I. D. Act, 1947 while refusing the employment to the Workman.

17. Similarly, Sec. 25-G of the I. D. Act, 1947 laid down as under:

"Where any Workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the Employer and the Workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other Workman."

18. The Ld. Shri P. Gaonkar representing the Workman during the course of his oral argument relied upon a decision of the Hon'ble Supreme Court of India in the case of Harjinder Singh v/s Punjab State Warehousing Corporation reported in (2010) 3 SCC 192, wherein it has been held that

"It is settled law that for attracting the applicability of Section 25-G of the Act, the Workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient

for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason."

19. In the instant case, the evidence on record clearly indicates that the Workman was in continuous service with the employer company since June, 2003 till 06-01-2009 as a 'Loader'. The employer company however failed to produce on record the seniority list as required under Rule 77 of the I. D. (Central) Rules, 1957 or any other agreement entered between them and the Workman. In the absence of the aforesaid evidence on record, it is proved that the employer company has failed to maintain the seniority list if any of the workmen employed in the category of 'Loader' and retrenched employee who was the last person employed in the said category of 'Loader'. Thus, the aforesaid action on the part of the employer company is in violation of Sec. 25-G as well as Sec. 25-H of the I. D. Act, 1947. It is therefore held that the action of the employer company in refusing the employment to the workman w.e.f. 07-01-2009 is illegal and unjustified.

Issue No. 5:

20. While discussing the Issue No. 1 hereinabove, I have already held that the Workman was employed as a 'Loader' with the employer company since June, 2003 till 07-01-09 continuously without any break in service. Similarly, while discussing the Issue No. 4, hereinabove, I have held that the action of the employer company in refusing employment to the Workman w.e.f. 07-01-09 is illegal and unjustified as it is in violation of the well established norms of principles of natural justice as well as Sec. 25-F, 25-G and 25-H of the I. D. Act, 1947 read with Rule 77 and 78 of the I. D. (Central) Rules, 1954. The evidence on record indicates that the Workman is unemployed since after the refusal of employment by the employer company. The Workman is therefore entitled for full back wages and continuity in services.

In view of the above discussions and with regards to the facts and circumstances of the case, I proceed ahead to adjudicate the reference as under:

ORDER

1. It is hereby held that the action of the Management of M/s. Pack-A-Well, Kundaim-Goa, in refusing employment to its Workman Shri Pandurang Gaude, Loader w.e.f. 07-01-09 is illegal & unjustified.

2. The Employer M/s. Pack-A-Well is hereby directed to reinstate the Workman, Shri Pandurang Gaude, Loader, in their services with full back wages and continuity in services with immediate effects.

3. No order as to costs.

4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2010-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 08-07-2010 in reference No. IT/30/05 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).
Porvorim, 19th August, 2010.

THE LABOUR COURT-II GOVERNMENT OF GOA AT PANAJI

(Before Shri Suresh N. Narulkar,
Hon'ble Presiding Officer)

Case No. Ref. IT/30/05

Surendra Dalal,
Rep. by Gomantak Mazdoor
Sangh,
Shetye Sankul,
Ponda-Goa. Workman/Party I

V/s

M/s. Atlantic Spinning and
Weaving Mills Ltd.,
Xeldem,
Quepem-Goa. Employer/Party II
Party I/Workman represented by Shri P. Gaonkar.
Party II/Employer marked as Ex-parte.

Panaji, Dated: 08-07-2010.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the

Government of Goa by order dated 20-07-2005 bearing No. 28/33/2002-LAB/372 referred the following dispute for adjudication by the Industrial Tribunal of Goa at Panaji-Goa.

"(1) Whether the action of the Management of Atlantic Spinning and Weaving Mills Ltd., in refusing employment to Shri Surendra Dalal, Sider, w.e.f. 06-06-2003, is legal and justified?

2. If not, to what relief, the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/30/05 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman') filed his statement of claim on 15-05-2006 at Exhibit-3. The case of the Workman as pleaded in his statement of claim is that the Employer/Party II (for short "Employer") is a Company registered under the Companies Act, having its factory at Xeldem, Quepem-Goa. He stated that the Employer Company is engaged in manufacturing of different types of threads and employing more than 500 workmen on an average per day. He stated that he was continuously worked with the Employer Company from 17-09-2001 till 05-11-2003. He stated that he was not allowed to resume the duty, when he went to resume the duty on 06-06-2003. He stated that neither the Employer Company has issued to him any memo or charge sheet for any misconduct nor conducted any enquiry at the time of refusal of employment. He submitted that no legal dues such as retrenchment compensation, notice pay, gratuity etc., was paid to him at the time of refusal of employment. He stated that since the Employer Company is employing more than 100 workmen, hence the Chapter V-B of the Industrial Disputes Act, 1947 is applicable to the Employer Company. He submitted that no prior permission is taken by the Employer Company before refusal of employment to him. He submitted that the matter of Charter of Demand is pending before the Hon'ble Tribunal and as such the Employer Company has not obtained any permission nor filed an application for permission u/s 33 of the I. D. Act, 1947 by offering a payment of one month's notice to the Workman. He contended that since the Employer Company did not offer any retrenchment compensation, notice pay in accordance with the provisions of I. D. Act, 1947, they have violated Section 25-F of the I. D. Act, 1947. He submitted that the action of the Employer

Company in refusing him to resume the duties, is illegal, unjustified and bad in law as the termination is done without complying with the provisions of the Industrial Disputes Act, 1947 and the rules made thereunder. He submitted that he raised an industrial disputes through their Union before the Dy. Labour Commissioner, vide Union letter dated 15-07-2003 which ended in failure. He submitted that he is unemployed and could not succeed in getting any job till date. He submitted that he is undergoing hardship due to unemployment after his termination. He therefore prayed that the refusal of employment to him by the Employer Company be declared as illegal, improper and unjustified and direct the Employer Company to reinstate him with full back wages and continuity in services.

3. The Employer Company resisted to the aforesaid claim statement by filing their written statement on 12-07-2007 at Exhibit-6. The Employer Company by way of preliminary objection stated that the present reference is not maintainable as the subject matter of the reference is not an "industrial dispute" and that the Party I is not a "workman" as defined under Section 2(s) of the I. D. Act, 1947. The Employer Company also stated that the Party I was not working with them nor he was refused employment w.e.f. 06-06-2003. The Employer Company further stated that the Party I was not working with them and therefore question of refusing him employment does not arise nor compliance with other provisions of law as stated by the Party I is required, consequently the question of payment of legal dues, notice pay or retrenchment compensation does not arise. The Employer Company stated that the Party I is gainfully employed. The Employer Company stated that the dispute raised by the Party I before the Dy. Labour Commissioner did not amount to an industrial dispute and the Commissioner has acted beyond the scope of his jurisdiction in entertaining a non-existent dispute. The Employer Company denied each and every allegation made by the Party I in his statement of claim and submitted that the Party I is not entitled for any relief as claimed by him. The Employer Company therefore prayed for dismissal of the reference issued by the Government of Goa.

4. Thereafter the Party I filed his rejoinder on 27-11-2007 at Exhibit-7. By the said rejoinder at Exhibit-7, Party I reiterates and confirms all the allegations, statements and averments made by him in his statement of claim filed in the present proceedings and denies all the statements,

averments and submissions made by the Employer Company in their written statement which are contrary and inconsistent to his case set out in the statement of claim.

5. Based on the pleadings filed by the respective parties, this Court frames the following issues on 01-01-2008 at Exhibit-8.

1. *Does the Party I/Workman prove that he was employed in the factory of the Party II?*
2. *Does the Party I/Workman prove that the Party II terminated his services with effect from 01-12-2003?*
3. *Whether termination of service of the Party I/Workman is legal and justified?*
4. *Whether the Party I/Workman is entitled to the reliefs as prayed for?*
5. *What Award?*

6. My answers to the aforesaid issues are as under:

- Issue No. 1: In the negative.
- Issue No. 2: In the negative.
- Issue No. 3: In the negative.
- Issue No. 4: Not entitled for any relief.
- Issue No. 5: As per final order.

REASONS

7. *Issue No. 1:* It is the Party I who has raised the present industrial dispute by alleging that he was working with the Employer Company since 17-09-2001 till 05-06-2003 continuously. The Employer Company denied the aforesaid allegations of the Party I in the written statement filed by them by stating that the Party I was not working with them and therefore question of refusing him employment does not arise. This Court therefore put the burden to prove the aforesaid contention on the Party I by framing the existing issue No.1.

I have heard the arguments of the Ld. Shri P. Gaonkar for the Party I.

8. The Ld. Shri P. Gaonkar representing the Party I during the course of his oral arguments submitted that the Party I has pleaded and also stated on oath that he was working with the Employer Company since 17-09-2001 till 05-06-2003 continuously. He submitted that the Party I was neither issued any Appointment Letter nor possessed any other document to show that he was working with the Employer

Company. He therefore submitted that the Party I has proved that he was employed in the factory of the Party II.

I have carefully considered the various oral submissions made by the Ld. Shri P. Gaonkar for Party I. I have also carefully perused the records of the present case.

9. Undisputedly, though the burden to prove the existing issue No. 1 is on the Workman that he was employed in the factory of the Party II, the Party I could not produce any cogent evidence in the form of document on record except making a statement on oath that he was working continuously with the Employer Company from 17-09-2001 till 05-06-2003 as a Sider in the Ring Frame Department. The Employer Company however denied the aforesaid contention of the Party I in the written statement filed by them as well as during the course of his cross examination. It was therefore incumbent upon the Party I to prove the said fact that he was working in the factory of the Employer Company by producing cogent evidence. The Party I also failed to give any justification for non-production of any documentary evidence to discharge the burden of proof. The Party I also failed to plead and state on oath as to the nature of his employment as well as his appointment i.e. whether he was appointed by issuing an Appointment Letter or orally and his attendance was marked in the Attendance Register maintained by the Party II. Failure to plead and subsequently state on oath the aforesaid fact, the Party I failed to discharge his initial burden to prove that he was employed in the factory of the Party II. Therefore, in the absence of any pleadings as to whether the Party I was appointed orally or by issuing an Appointment Letter in writing and his attendance as well as payment of wages, the adverse inference is drawn against the Party I that he failed to prove that he was employed in the factory of the Party II. It is therefore held that the Party I has failed to prove that he was employed in the factory of the Party II.

10. *Issue Nos.: 2 & 3:* It is the Party I who has raised the present industrial dispute by contending that the termination of his services by the Employer Company w.e.f. 06-06-2003 is illegal and unjustified. The Party II however in the written statement filed in the present proceedings contended that the Party I was never employed in their factory and therefore the termination of services of the Party I w.e.f. 06-06-2003 does not arise at all, and hence this Hon'ble Court framed the existing Issue Nos. 2 & 3 by putting the burden to prove the same on the Party I.

11. While discussing the issue No. 1 herein-above, I have already come to the conclusion and held that the Party I has failed to prove that he was employed in the factory of the Party II. The Party I having failed to prove that he was employed in the factory of the Party II, the Party I also failed to prove that his services were terminated w.e.f. 06-06-2003 by the Party II. It is therefore held that the Party I failed to prove that his service has been terminated by the Party II. Consequently, there is no question of legality as well, as justification for the termination of services of the Party I arose. It is therefore held that the Party I failed to prove that his services has been terminated by the Party II, is illegal and unjustified.

12. *Issue No. 4:* While discussing the Issue No. 1, I have already come to the conclusion and held that the Party I has failed to prove that he was employed in the factory of Party II. Similarly while discussing the Issue Nos. 2 & 3 I have already come to the conclusion and held that the Party I failed to prove that his services has been terminated w.e.f. 06-06-2003 by the Party II and therefore the question of illegality and unjustifiability of the termination of services does not arise at all. Having failed to prove the aforesaid issue Nos. 1, 2 & 3 by the Party I, he is not entitled to any relief as prayed by him.

In view of the above discussions and with regards to the facts and circumstances of the case, I pass the following Order:

ORDER

1. It is held that the Party I, Shri Surendra Dalal failed to prove that he was employed in the factory of Atlantic Spinning and Weaving Mills Ltd. Consequently, the action of the Management of Atlantic Spinning and Weaving Mills Ltd., in refusing employment to Shri Surendra Dalal, Sider, w.e.f. 06-06-2003, is legal and justified, does not arise at all. Hence, the Party I, Shri Surendra Dalal, is not entitled to any relief.

2. No order as to costs.

3. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2010-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 16-06-2010 in reference No. LC-II/IT/7/09 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 19th August, 2010.

THE LABOUR COURT-II
GOVERNMENT OF GOA
PANAJI-GOA

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. LC-II/IT/7/09

Ms. Lalita Naik,
Rep. by General Secretary,
Gomantak Mazdoor Sangh,
G-5, Machado Apts.,
Tisk, Ponda-Goa. ... Workman/Party I

V/s

M/s. Pack-A-Well,
Plot Nos. 9, 10, 11 & 14,
Kundaim Industrial Estate,
Kundaim-Goa. ... Employer/Party II

Part I/Workman represented by Shri P. Gaonkar.

Party II/Employer marked at Ex-parte.

Panaji, dated: 16-06-2010

AWARD

1. In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 22-09-2009 bearing No. 28/18/2009-LAB/963 referred the following dispute for adjudication by the Industrial Tribunal of Goa.

- “(1) Whether the action of the Management of M/s. Pack-A-Well, Kundaim-Goa in refusing employment to its workperson Ms. Lalita Naik, supervisor, w.e.f. 25-11-2008, is legal and justified?
- (2) If not, to what relief, the workperson is entitled to?”

2. On receipt of the reference, a case was registered under No. LC-II/IT/7/09 and registered A/D notice was issued to the parties. In pursuance to the said notice, the Workman/Party I put in her appearance. The Employer/Party II was duly served by registered A/D notice, however failed and neglected to appear on 18-11-2009 and subsequent scheduled dates of hearing without any justifiable cause, hence the Employer/Party II was marked as ex-parte. The Workman/Party I (for short 'Workman'), filed her statement of claim on 18-11-2009 at Exb. 3. The facts of the case in brief as pleaded by the Workman are that the Gomantak Mazdoor Sangh is a registered Trade Union registered under the Trade Union Act, 1926 and it represents almost all the Workmen employed by the Employer/Party II at Goa plants. She stated that the Employer/Party II (for short "Employer") is an industrial establishment carrying out the job work of printing and packing of multinational companies such as Colgate and Palmolive, Whisper, etc. She stated that the Employer is carrying out its business activities in its factory at Kundaim Industrial Estate, Kundaim-Goa since the year 1998. She stated that though the business of the Employer Company was increasing every year, the employer was implementing the various unfair labour practices such as non-payment of minimum wage, non-coverage of the workers under ESIC, Provident Fund from the initial date of employment of its workmen. She stated that she worked with the Employer Company from the date of her joining i.e. from April, 1998 till the date of refusal of employment continuously without any break. She stated that because she joined the Union alongwith other workers, she was not allowed to resume the duty w.e.f. 25-11-2008. She stated that she made a demand for reinstatement vide her representation dated 25-11-2008 on refusal of her employment by the Employer Company, but the employer refused to allow her to resume on duty. She stated that therefore she raised an Industrial Dispute before the Assistant Labour Commissioner, Ponda through their Union vide letter dated 25-11-2008 which ended in failure due to the adamant attitude of the employer. She contended that before her refusal of employment, she was not issued any charge sheet nor any enquiry was conducted and hence the employer has violated the principles of natural justice. She contended that at the time of refusal of her employment neither she was paid nor offered any retrenchment compensation, notice pay and other dues and hence the refusal of her employment is in violation of Sec. 25-F of the I. D.

Act, 1947 and therefore it is illegal, unjustified and bad in law. She contended that after refusal of her employment, the employer has employed new workmen on her place of work and she was not re-employed by the employer and hence violated the provisions of Sec. 25-H of the I. D. Act, 1947. She submitted that before refusal of her employment, the employer has not followed the procedure in accordance with Sec. 25-G of the I. D. Act, 1947 and as such violated the said provisions of the I. D. Act and hence her refusal is illegal, unjustified and bad in law. She submitted that at the time of her refusal of employment, the matter of Charter of Demands was pending before the Conciliation Officer since 12-08-2008 and the first meeting was fixed by the Assistant Labour Commissioner and Conciliation Officer, Ponda-Goa and the employer has not obtained the permission of the appropriate authority nor an application u/s 33 of the I. D. Act, 1947 was filed before the appropriate authority and hence violated Sec. 33 of the I. D. Act, 1947. She submitted that before refusal of her employment, the provisions of the I. D. Act, 1947 were not followed by the employer. She therefore contended that the refusal of employment to her by the employer is illegal, unjustified and bad in law and she is entitled to reinstate with full back wages and continuity in services. She submitted that since her refusal of employment she is unemployed and could not succeed in getting any employment. She therefore prayed that the refusal of employment to her be declared as illegal, unjustified and bad in law and direct the employer to reinstate her in employment with full back wages and continuity in service.

3. Though the Employer Company has been duly served with summons of this Hon'ble Court by registered A/D notice, the employer failed to appear before this Hon'ble Court on the scheduled dates of hearing and consequently failed to resist the present claim statement of the Workman. In the circumstances, the claim of the Workman remained unchallenged.

4. Based on the pleadings filed by the Workman in the present reference this Hon'ble Court framed the following issues on 10-12-2009 at Exhibit-4.

1. *Whether the Workman/Party I proves that she was employed with Employer/Party II as a "Supervisor" w.e.f. April, 1998 till the date of her termination on 25-11-2008 continuously without any break in service?*
2. *Whether the Workman/Party I proves that the Employer/Party II had refused employment to her w.e.f. 25-11-2008?*

3. *Whether the Workman/Party I proves that Employer/Party II had violated Section 33 of the Industrial Disputes Act, 1947?*

4. *Whether the Workman/Party I proves that the action of the Employer/Party II in refusing employment to her is illegal and unjustified?*

5. *Whether the Workman/Party I proves that she is entitled for any relief?*

6. *What Award ? What Order?*

5. My answers to the aforesaid issues are as under:

Issue No. 1: In the affirmative.

Issue No. 2: In the affirmative.

Issue No. 3: In the negative.

Issue No. 4: In the affirmative.

Issue No. 5: In the affirmative.

Issue No. 6: As per final order.

REASONS

6. *Issue No. 1:* It is the Party I, who has raised the present Industrial Dispute by contending that she was employed with the employer as a 'Supervisor' w.e.f. April, 1998 till date of her termination on 25-11-2008 continuously without any break in service. Therefore, the burden to prove the said contention is on the Workman.

I have heard the oral arguments of the Ld. Rep., Shri P. Gaonkar for the Workman.

7. The Ld. Rep., Shri P. Gaonkar representing the Workman during the course of his oral arguments submitted that in order to prove her aforesaid contention, the Workman has examined herself as her sole witness. He submitted that the Workman also produced on record certain documentary evidence in support of her oral evidence. He submitted that the Workman in her oral evidence on record clearly stated that she was working as a 'Packer' since April, 1998 continuously without any break in service till the refusal of employment to her on 25-11-2008. He submitted that in support of her oral evidence the Workman has produced on record an Identity Card issued by E.S.I. Corporation (Exb. W/7), E.P.F. Slip issued to her for the year 2000-2001 (Exb. W/8), copies of the returns filed by the Employer Company from March, 2000 to February, 2008 (Exb. W/9 colly) and wage slips for the month of August, 2006 to December, 2006 and January, 2007 to May, 2007 (Exb. W/10 colly). He submitted that the said E.P.F. slip for the year 2000-2001 on record at Exb. W/8 indicates that the Employer Company has paid the provident fund of the Workman for the

year 2000-2001 under the Employees Provident Fund Scheme 1952. He submitted that the copies of the returns filed by the employer from March, 2000 to February, 2008 in the prescribed Form No. 6-A of the Employees Provident Fund Scheme 1952 clearly indicates that the employer had deposited from time to time annually the Provident Fund of their workmen including the Party I. He submitted that the Workman finally produced on record the wage slips issued by the Employer Company at Exb. W/10 colly which indicates that the Workman was working with the Employer Company for the said period as a Packer. He finally submitted that the said oral as well as documentary evidence produced by the Workman on record has not been denied by the employer by remaining absent and thus, remained unchallenged.

I have carefully perused the records of the present case. I have also carefully considered the various oral submissions made by the Ld. Rep., Shri P. Gaonkar appearing for the Workman.

8. In order to prove her contention that she was employed with the Employer Company as a 'Packer' w.e.f. April, 1998 till the date of her termination on 25-11-2008 continuously without any break in service, the Workman has examined herself as her sole witness. The Workman in her Affidavit-in-Evidence on record clearly and categorically deposed that she was working as a "Packer" in the Production Department of the Employer Company since April, 1998 till the date of her refusal of employment w.e.f. 25-11-2008 continuously without any break in service. The Expression 'Continuous Service' has been defined u/s 25-B of the I. D. Act, 1947 and in terms of sub-section (2) of Sec. 25-B that if a Workman during the period of 12 calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer 240 days with a period of one year, he will deemed to be in continuous service.

9. In the present case, the Workman claimed that she was employed with the Employer Company since April, 1998 till the date of refusal of her employment w.e.f. 25-11-2008 continuously without any break in service. The Workman has also produced on record the P. F. Returns filed by the employer starting from the year 2002 to 2008 (W/9 colly), wage slips from August, 2006 to December, 2006, January, 2007 to May, 2007 (Exb. W/10 colly), P. F. Slip for the year 2000-2001 and Identity Card issued by the ESI Corporation (Exb. W/7). The said Identity Card issued by ESI Corporation (Exb. W/7). E. P. F. Slips issued to her

for the year 2000-2001 (Exb. W/8) and copies of the returns filed by the Employer Company from March, 2000 to February, 2008 (Exb. W/9 colly) clearly corroborates the case of the Workman that she was in continuous service of the Employer Company, in the absence of any contrary evidence on record. Thus, the oral as well as documentary evidence on record clearly proves that the Workman was employed with the employer company since April, 1998 till 24-11-2008 continuously without any break in service as a 'Packer' and not as a 'Supervisor'. It is therefore held that the Workman was employed with the employer company as a 'Packer' w.e.f. April, 1998 till 24-11-2008 continuously without any break in service.

10. *Issue No. 2:* It is the Workman who has raised the present industrial dispute by contending that the Employer Company had refused an employment to her w.e.f. 25-11-2008. Therefore, the burden of proving the aforesaid contention is on the Workman.

11. The Workman in order to prove her aforesaid contention that she has been refused employment by the employer company w.e.f. 25-11-2008, produced on record a notice of the Employer Company dated 24-11-2008 stating the break in services to her at Exb. W/3 in support of her oral evidence. The said notice of the Employer Company dated 24-11-2008 at Exb. W/3 clearly indicates that the Workman has been given break in service from 25-11-2008. It is therefore held that the Employer Company has refused employment to the Workman w.e.f. 25-11-2008.

12. *Issue No. 3:* It is the Workman who has raised the present Industrial Dispute pertaining to her alleged illegal termination of services by contending that it is in violation of Sec. 33 of the I. D. Act, 1947. Therefore, the burden to prove the said contention is on the Workman.

Section 33 (1) of the I. D. Act, 1947 prohibits the employer to alter to the prejudice of the workmen concerned in such dispute the service conditions etc., to remain unchanged under certain circumstances during the pendency of the proceedings before the Conciliation Officer or a board or of any proceedings before a Labour Court or Tribunal or National Tribunal in respect of an Industrial Dispute.

13. Though the Workman in her oral evidence stated that at the time of refusal of her employment the matter of Charter of Demand was pending before the Conciliation Officer since

12-8-08 when the first meeting was fixed by Assistant Labour Commissioner and Conciliation Officer, Ponda Goa, the Workman has however failed to produce on record any cogent evidence in the form of document to substantiate her aforesaid statement. The Workman also failed to give any satisfactory justification for non-production of any documentary evidence in support of her statement that they have raised a Charter of Demand vide their letter dated 20-7-08 and that the matter is pending before the Assistant Labour Commissioner and Conciliation Officer, Ponda-Goa. It is therefore held that the Workman failed to prove that the Employer Company has violated Sec. 33 of the I. D. Act, 1947.

14. *Issue No. 4:* It is the Workman who has raised an industrial dispute by contending that the action of the Employer Company in refusing employment to her w.e.f. 25-11-08 is illegal and unjustified. It is therefore incumbent upon the Workman to prove that the action of the employer in terminating her services w.e.f. 25-11-08 is illegal and unjustified.

15. In order to prove her case the Workman has led oral evidence by examining herself. In her oral evidence on record she categorically stated that neither the Employer Company has issued any charge sheet nor any inquiry was conducted before refusal of employment to her. She stated that the Employer Company has employed new workmen in her place after refusal of employment to her and hence violated Section 25-H of the I. D. Act, 1947. She stated that the Employer Company has also not followed the procedure in accordance with Sec. 25-G of the I. D. Act, 1947. She stated that at the time of refusal of her employment neither she was offered nor paid any retrenchment compensation, notice pay and other dues and hence violated Sec. 25-F of the I. D. Act, 1947. She finally deposed that the Employer Company has violated the basic principles of natural justice while terminating her services. The aforesaid oral evidence of the Workman remained unchallenged since the Employer Company failed to cross examine the Workman by remaining absent.

16. While discussing the Issue No. 1 herein-above, I have already held that the Workman was employed with the Employer Company as a 'Packer' since November, 1998 till 25-11-2008 continuously without any break in service. Neither the Workman nor the employer has produced on record any material evidence to show that the services of the Workman has been terminated on

account of misconduct committed by her. Therefore, one does not require to issue any charge sheet or conduct an enquiry. Therefore, the question of violation of principles of natural justice does not arise. The Workman has produced on record a notice of the employer company dated 24-11-08 at Exb. W/3 stating that the Workman has been given break in service from 25-11-2008. The said termination of services of the Workman by the Employer Company amounts to retrenchment of services of the Workman. Therefore, the Employer Company requires to follow the proper procedure laid down under the I. D. Act, 1947 while terminating the services of the Workman.

17. Section 25-F of the I. D. Act reads as under:

"No Workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until-

- (a) *The Workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the Workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *The Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days of average pay (for every completed period of service) or any part thereof in excess of six months; and*
- (c) *Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

18. In the instant case, the Workman was employed with the Employer Company since 1998 till 24-11-2008 as a 'Packer' continuously without break in service. The oral evidence of the Workman on record indicates that the Employer Company failed to issue one month notice in writing indicating the reasons for retrenchment and the period of notice has expired or that the Workman has been paid in lieu of such notice, wages for the period of the notice. The oral evidence of the Workman on record also indicates that the employer company has failed to pay the Workman at the time of refusal of her employment, retrenchment compensation equivalent to fifteen days average pay of every completed years of continuous service or any part thereof in excess of six months. The evidence on record indicates that no notice in the prescribed manner is served on

the appropriate Government. Thus, the evidence on record proves that the employer company has violated Sec. 25-F of the I. D. Act, 1947.

19. Similarly, Section 25-G of the I. D. Act, 1947 reads as under:

"Where any Workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment in the absence of any agreement between the employer and the Workman in this behalf, the employer shall ordinarily retrench the Workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other Workman."

20. In the instant case, the evidence on record clearly indicates that the Workman was in continuous service with the employer company since 1998 till 24-11-2008 as a 'Packer'. The Employer Company however failed to produce on record the Seniority List as required under Rule 77 of the Industrial Dispute (Central) Rules, 1957 or any other agreement entered between them and the Workman. In the absent of the aforesaid evidence on record, it is proved that the Employer Company has failed to maintain the Seniority List if any of the Workman employed in the category of 'Packer' and retrenched the employee who was the last person employed in the said category of packer. Thus, the aforesaid action on the part of the employer company is in violation of Section 25-G as well as Section 25-H of the Industrial Disputes Act, 1947. It is therefore held that the action of the Employer Company in refusing the employment to the Workman w.e.f. 25-11-2008 is illegal and unjustified.

21. *Issue No. 5:* While discussing the Issue No. 1 hereinabove, I have already held that the Workman was employed as a 'Packer' with the Employer Company since April, 1998 till 24-11-08 continuously without any break in service. Similarly, while discussing the issue No. 4, hereinabove I have held that the action of the Employer Company in refusing employment to the Workman w.e.f. 25-11-2008 is illegal and unjustified as it is in violation of Sec. 25-F, 25-G and 25-H of the I. D. Act, 1947 read with Rules 77 and 78 of the Industrial Dispute (Central) Rules, 1954. The evidence on record indicates that the Workman is unemployed since after the refusal of employment by the employer company. The Workman is therefore entitled for full back wages and continuity in services.

In view of the above discussions and with regards to the facts and circumstances of the case, I proceed ahead to adjudicate the reference as under:

ORDER

1. It is hereby held that the action of the Management of M/s. Pack-A-Well, Kundaim, Goa in refusing employment to their Workperson, Miss Lalita Naik, 'Packer' w.e.f. 25-11-08 is illegal & unjustified.
2. The Management of Pack A-Well, Kundaim, Goa is therefore directed to reinstate in their service, the Workperson Miss Lalita Naik, Packer, with full back wages and continuity in services with immediate effect.
3. No order as to costs.
4. Inform the Government accordingly.

Sd/-
Suresh N. Narulkar,
Presiding Officer,
Labour Court II.

Department of Personnel

Order

No. 7/1/94-PER

On the recommendation of the Goa Public Service Commission conveyed vide its letter No. COM/I/5/21(1)/2007/130 dated 18-05-2010, Governor of Goa is pleased to appoint Shri Ashok P. Gopalkrishna Menon, to the post of Director of Fire and Emergency Services, (Group 'A' Gazetted) in the Directorate of Fire and Emergency Services, Panaji, in the Pay Scale of Rs. 15,600-39,100 plus Grade Pay Rs. 7,600/- with effect from the date of his joining. His pay shall be fixed as per Rules.

2. Shri Menon shall be on probation for a period of 02 years.

3. The pay and allowances of the officer shall be debited to the Budget Head controlled by the Directorate of Fire and Emergency Services, Panaji.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 13th August, 2010.

Order

No. 6/2/2002-PER

The Governor of Goa is pleased to order transfer of Smt. Neela S. Dharwadkar, Under Secretary (Revenue-II) and post her as Under Secretary to Chief Secretary, with immediate effect, in public interest.

Shri Pandharinath N. Niak, Under Secretary (Revenue-I), shall hold charge of the post of Under Secretary (Revenue-II), in addition to his own duties, with immediate effect and until further orders.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 18th August, 2010.

◆◆◆

Department of Public Health
Order

No. 25/32/2002-I/PHD

Read: Order No. 25/32/2002-I/PHD dated 11-10-2002.

The name of the Hospital "Sagar Apollo Hospital" shall henceforth be read as "Sagar Hospitals".

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 6th August, 2010.

Order

No. 4/3/2005-II/PHD/Vol. I

Read: (1) Order No. 4/3/2005-II/PHD dated 30-03-2005.

(2) Order No. 4/3/2005-II/PHD dated 28-10-2005.

(3) Order No. 4/3/2005-II/PHD dated 07-08-2006.

(4) Order No. 4/3/2005-II/PHD/Vol. I dated 26-09-2007.

(5) Order No. 4/3/2005-II/PHD/Vol. I (C) dated 07-05-2008.

(6) Order No. 4/3/2005-II/PHD/Vol. I dated 09-06-2009.

Government is pleased to extend the term of ad hoc promotion of Dr. Uday Kudalkar, Lecturer in

Anatomy against the post of Assistant Professor in Anatomy in Goa Medical College, Bambolim in the pay scale of Pay Band—3 Rs. 15,600-39,100+Grade Pay of Rs. 6,600/- and other allowances for a further period w.e.f. 30-03-2010 to 31-12-2010 or till the post is filled on regular basis, whichever is earlier.

The above ad hoc appointment shall not bestow on him any claim for regular appointment or the service rendered by him on ad hoc basis in the grade shall not be counted for the purpose of seniority in the grade or for eligibility for promotion to the next higher grade, if any.

This issues with the approval of the Goa Public Service Commission vide their letter No. COM/II/ /11/30(6)/92-05/1249 dated 21-07-2010.

By order and in the name of the Governor of Goa.

Derrick Pereira Neto, Under Secretary (Health).

Porvorim, 12th August, 2010.

Order

No. 4/3/2005-II/PHD/Vol. I

Read: (1) Order No. 4/3/2005-II/PHD dated 30-03-2005.

(2) Order No. 4/3/2005-II/PHD dated 28-10-2005.

(3) Order No. 4/3/2005-II/PHD dated 07-08-2006.

(4) Order No. 4/3/2005-II/PHD/Vol. I dated 26-09-2007.

(5) Order No. 4/3/2005-II/PHD/Vol. I (F) dated 07-05-2008.

(6) Order No. 4/3/2005-II/PHD/Vol. I (Part) (A) dated 29-07-2008.

(7) Order No. 4/3/2005-II/PHD/Vol. I dated 09-06-2009.

Government is pleased to extend the term of ad hoc promotion of following Assistant Lecturers against the post of Lecturers in Goa Medical College in the pay scale of Rs. 10,000-325-15,200+ NPA and other allowances for a further period w.e.f. 30-03-2010 to 31-12-2010 or till the posts are filled on regular basis, whichever is earlier:

Sr. No.	Name and present post held	Ad hoc promotion to the post of
1	2	3

1.	Dr. Isabella Coelho, Assistant Lecturer in Physiology	Lecturer in Physiology.
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1	2	3
2.	Dr. Nilam Madhale, Assistant Lecturer in Anatomy	Lecturer in Anatomy.

The above ad hoc promotions shall not bestow on them any claim for regular appointment or the service rendered by them on ad hoc basis in the grade shall not be counted for the purpose of seniority in the grade or for eligibility for promotion to the next higher grade, if any.

This issues with the approval of the Goa Public Service Commission vide their letter No. COM/II/11/30(6)/92-05/1249 dated 21-07-2010.

By order and in the name of the Governor of Goa.

Derrick Pereira Neto, Under Secretary (Health).
Porvorim, 12th August, 2010.

Order

No. 4/3/2005-II/PHD/Vol. I

- Read: (1) Order No. 4/3/2005-II/PHD dated 30-03-2005.
(2) Order No. 4/3/2005-II/PHD dated 28-10-2005.
(3) Order No. 4/3/2005-II/PHD dated 07-08-2006.
(4) Order No. 4/3/2005-II/PHD/Vol.I dated 26-09-2007.
(5) Order No. 4/3/2005-II/PHD/Vol. I (F) dated 07-05-2008.
(6) Order No. 4/3/2005-II/PHD/Vol. I (Part) (D) dated 29-07-2008.
(7) Order No. 4/3/2005-II/PHD/Vol. I dated 09-06-2009.

Government is pleased to extend the term of ad hoc promotion of Dr. Sanjay Pandarbale, Lecturer in Physiology against the post of Assistant Professor in Physiology in Goa Medical College, Bambolim in the pay scale of Pay Band—3 Rs. 15,600-39,100+ Grade Pay of Rs. 6,600/- and other allowances for a further period w.e.f. 30-03-2010 to 31-12-2010 or till the post is filled on regular basis, whichever is earlier.

The above ad hoc appointment shall not bestow on him any claim for regular appointment or the service rendered by him on ad hoc basis in the grade shall not be counted for the purpose of seniority in the grade or for eligibility for promotion to the next higher grade, if any.

This issues with the approval of the Goa Public Service Commission vide their letter No. COM/II/11/30(6)/92-05/1249 dated 21-07-2010.

By order and in the name of the Governor of Goa.

Derrick Pereira Neto, Under Secretary (Health).
Porvorim, 12th August, 2010.

Order

No. 45/1/2007-I/PHD

Read: Memorandum No. 45/1/2007-I/PHD dated 22-03-2010.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/24(4)/2007/Vol.I/33 dated 12-02-2010, Government is pleased to appoint the following Junior Pathologists (Group "A" Gazetted) in the Pay Band—3 of Rs. 15,600-39,100+(Grade Pay) Rs. 5400/- under the Directorate of Health Services with immediate effect as per the terms and conditions contained in the Memorandum cited above against the posting indicated at column No. 3.

Sr. No.	Name of the Doctor	Place of Posting
1	2	3
1.	Dr. Manali Anant Bandekar	Hospicio Hosptial, Margao.
2.	Dr. Gauri Shivram Salgaonkar	Asilo Hospital, Mapusa.

They shall be on probation for a period of two years.

Their character and antecedents have been verified by the District Magistrate North Goa District, Panaji-Goa and District Magistrate South Goa District, Margao-Goa, respectively. Their appointment is subject to Medical Fitness issued by the Medical Board, Goa Medical College, Bambolim.

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).
Porvorim, 13th August, 2010.

Order

No. 22/6/2003-I/PHD

Read: (1) Order No. 22/6/2003-I/PHD dated 04-12-2008.

(2) Order No. 22/6/2003-I/PHD dated 30-06-2010.

Government is pleased to extend the contract appointment of Dr. Satendra Dessai, Consultant Neurosurgeon at Hospicio hospital, Margao under Directorate of Health Services, Panaji-Goa for a further period of one year w.e.f. 21-11-2009 to 20-11-2010 on monthly emoluments of Rs. 45,000/- (Rupees forty five thousand only) on the same terms and conditions contained in the Agreement dated 10-08-2005.

This is issued in supersession of this Department's earlier Order of even number dated 30-06-2010.

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 17th August, 2010.

Addendum

No. 22/4/2001-I/PHD

Read: Order No. 22/4/2001-I/PHD dated 13-04-2010.

In the above referred Order dated 13-04-2010 the following para shall be added after the first para.

"The pay of Smt. Ana Maria Josephina Vaz e Braganza shall be fixed in terms of provisions of F.R. 22(I) (a) (1)".

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 13th August, 2010.

Department of Public Works

Office of the Principal Chief Engineer

Order

No. 40/2/2010/PCE-PWD-ADM(II)/150

Government is pleased to order the transfer of Shri Rosario Pereira, Assistant Engineer, presently

attached to Sub-Division II, Division XXV, PWD, Quepem and post him as Assistant Surveyor of Works in Circle Office III, PWD. Altinho, Panaji in the existing vacancy with immediate effect, in public interest.

By order and in the name of the Governor of Goa.

J. J. S. Rego, Principal Chief Engineer, PWD & ex officio Addl. Secretary.

Panaji, 19th August, 2010.

Department of Revenue**Notification**

No. 22/12/2010-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for the public purpose viz. Land Acquisition for expansion of Industrial Estate at Tuem in Pernem taluka.

Now, therefore, the Government hereby notifies, under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as the "said Act") that said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the

acquisition is abandoned wholly or in part, the fact will also be notified in the same manner.

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer, Goa Industrial Development Corporation, Panaji-Goa, to perform the functions of a Collector, North Goa District, Panaji, under the said Act in respect of the said land.

5. The Government also authorizes under sub-section (2) of Section 4 of the said Act, the following Officers to do the acts, specified therein in respect of the said land.

1. The Collector, North Goa District, Panaji-Goa.
2. The Special Land Acquisition Officer, Goa Industrial Development Corporation, EDC Complex, Patto Plaza, Panaji-Goa.
3. The Chief General Manager, Goa Industrial Development Corporation, EDC Complex, Patto Plaza, Panaji-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Special Land Acquisition Officer, Goa Industrial Development Corporation, Panaji, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Pernem		Village: Tuem
Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mtrs.
1	2	3
60 O:	Government (Lease Holder).	40,850
	1. Devki Deu Harmalkar. 13600m ²	
	2. Shantaram Jaidev Naik. 13600m ²	
	3. Taramati Parshuram Lingudkar. 13600m ²	
67/1 O:	Government of Goa, Daman & Diu (Lease Holder).	38,700
	1. Rama Naik Tuenkar. 19800m ²	

1	2	3
<i>Boundaries :</i>		
North: S. No. 63 & S. No. 57.		
South: S. No. 24 & S. No. 71.		
East : S. No. 62/45, S. No. 58, 59.		
West : S. No. 66 & S. No. 61.		
		Total: 79,550

By order and in the name of the Governor
of Goa.

Pandharinath N. Naik, Under Secretary (Rev I).

Porvorim, 16th August, 2010.

Corrigendum

No. 23/41/2009-RD

Read: Notification No. 23/41/2009-RD dated 25-11-2009 published in the Official Gazette, Series II No. 36 on pages 940 to 942 dated 04-12-2009 and in two local newspapers viz. Goa Doot dated 28-11-2009 and Herald dated 28-11-2009 for Construction of Bridge between Tharmas to Ozari Sangaowada in Dhargal Constituency.

In the above referred Notification in the Villages mentioned below area against Survey No. in the Schedule be replaced by area as shown in column 3 below:

Survey No./ /PT. Sheet No./ /Sub. Div. No./ Chalta No.	Earlier notified approx. area (in sq. mtrs.)	Revised notified approx. area (in sq. mtrs.)
1	2	3
Village: Cansarvornem		Taluka: Pernem
92/17 part	195	210
92/18 part	557	574
97/7 part	15	58
Village: Alorna		Taluka: Pernem
258/51	578	848

The total area notified earlier under Section 4(1) under the following Villages in the above said Notification may also be replaced as mentioned in column No. 3 below:

Village	Earlier notified area (in sq. mtrs.)	Revised notified area (in sq. mtrs.)
1	2	3
Cansarvornem	4904	5018
Alorna	3137	3407
Grand Total	8041	8425

The rest of the contents of above referred Notification shall remain unchanged.

By order and in the name of the Governor of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).
Porvorim, 16th August, 2010.

Addendum

No. 23/41/2009-RD

Read: Notification No. 23/41/2009-RD dated 25-11-2009 published in the Official Gazette, Series II No. 36 on pages 940 to 942 dated 04-12-2009 and in two local newspapers viz. Goa Doot dated 28-11-2009 and Herald dated 28-11-2009 for Construction of Bridge between Tharmas to Ozari Sangaowada in Dhargal Constituency, the area against Survey No. in the Schedule be read as shown in column 3 below:

In the schedule appended to the above referred Notification in the village Cansarvornem the below mentioned survey No. be added by including the area and the name of the following interested parties:

Survey No./ /P. T. Sheet No./Sub. Div. No./Chalta No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
97/6	O: Sitaram Atmaram Naik. T: Anant Ganesh Kubal.	39

Boundaries :

North: S. No. 92/17, 18, 96/8.
South: S. No. 92/17, 18, 96/8.
East : S. No. 92/18, 96/6, 7.
West : S. No. 92/17, 96/6, 7.

By order and in the name of the Governor of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).
Porvorim, 16th August, 2010.

Department of Transport

Directorate of Transport

—
Order

No. D.Tpt/EST/277/2010/2664

The following Assistant Directors of Transport are transferred with immediate effect on administrative grounds and in public interest.

Sr. No.	Name of the Officer	Present posting	Officer to which transferred
1.	Shri Laxmikant S. Kundaikar	OSD to Director of Transport	A.D.T. (HQ).
2.	Shri Ivo Rodrigues	A.D.T., Ponda	A.D.T., Mapusa.
3.	Shri Nandakishor Arolkar	A.D.T., Mapusa	A.D.T., Ponda.
4.	Shri Guirish Dalvi	A.D.T., (HQ)	A.D.T. (South), Margao.

The above officers stand relieved from their present postings with immediate effect and shall not avail any joining period or any type of leave till they assume their new postings.

Consequent upon posting of Shri Guirish Dalvi as ADT (South), Shri Prakash Azavedo, ADT (Enforcement-South) stands relieved of the additional charge of the office of the Asstt. Director of Transport (South), Margao.

By order and in the name of the Governor of Goa.

Arun L. Desai, Director of Transport & ex officio Joint Secretary (Tpt).

Panaji, 13th August, 2010.

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